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CONTENTS

ARTICLES

REDEFINING INSIDER DEALING LAW FOR EMERGING MARKETS: A COMPARATIVE LEGAL STUDY

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The collapse of the so-called communist regimes in eastern Europe and the ending of the cold war have had a significant bearing on the relationships of various subjects of international law. Indeed, not only has the international community witnessed the winds of change in power relations, but also the international community has seen major shifts in patterns of capital formation and relations. We have seen, for example, how through the structural adjustment programmes and the stabilisation packages, international financiers such as the World Bank and the International Monetary Fund have exerted socio-economic and political pressure on developing countries.[1] Indeed, in many developing countries where donor instigated economic reforms are being carried out, privatisation and related economic policies such as those on the setting up of stock markets in these countries have been proposed by the international financiers.[2] In this paper, it is the efficacy of some of the important legal rules and structures for regulating public distribution of securities on emerging stock markets that are examined. In pursuing this discourse, we will look at two case studies. One case study is taken from Africa and the other from eastern Europe. These two regions represent geographical areas where stock markets are now beginning to emerge, mainly as facilitators of the massive privatisations in the regions. In the study, we will thus look at the efficacy of the laws on insider dealing in Zambia and in Hungary, and then provide an analysis of the theories underpinning the control of insider dealing generally.

Insider dealing law in Zambia was first introduced in 1993 when the Securities Act 1993 was enacted. Section 52 of the Securities Act 1993 spells out the statute law that prohibits insider dealing in Zambia. The Securities Act 1993 is one of the pieces of legislation which were hastily enacted to facilitate implementation of the structural adjustment programme in Zambia.[3] Indeed, a stock market has now been established in Zambia and it is fully operational.

That said, it must be observed that there are some critics who argue that insider dealing is a 'victimless crime' in that it is not clear if there is actually a loser.[4] Others claim that the practice of insider dealing increases the volume of sales on a market, so that overall the market gains.[5] Indeed, the disparity in these views is buttressed by empirical evidence showing that in the United Kingdom, for example, by 1995 there were less than fifty convictions from the time the offence was introduced.[6] By contrast, the case of Zambia

1 There is an abundance of literature on this. See also generally, *infra.* (n.2).

2 See K.K. Mwenda, "Zambia's Securities Act 1993 on Trial: The Case of Insider Dealing," *Statute Law Review,* Vol. 18, No. 2, (1997), p. 150. See also K.K. Mwenda, "The Securities Act 1993 of Zambia: A Comment On The Defective Provisions For Controlling Insider Dealing in Zambia," *Stellenbosch Law Review,* Vol. 8, No. 2, (1997), p. 225.

3 Other statutes include the Privatisation Act 1992, the Investment Act 1991 (now repealed and replaced by the Investment Act 1993), and the Investment Act 1993.

4 See J. Dine, *Criminal Law in The Company Context* (Aldershot: Dartmouth Publishing, 1995), p. 57.

5 See *Ibid.*, p. 57.

6 See *Ibid.*, p. 58.

presents an even more interesting situation. In Zambia, like in many other developing countries, there have been no convictions of insider dealing at all.[7] We shall examine later some of the theoretical issues underpinning the offence of insider dealing.

THE LAW ON INSIDER DEALING IN ZAMBIA

In Zambia, the principal piece of legislation which deals with insider dealing is the Securities Act 1993. Indeed, in many ways this statute reinforces rules of the common law on contracts and tort. The Securities Act 1993 attempts to address the law on insider dealing in one statutory provision. This section reads as follows:

> (1) A person to whom this section applies who deals, or counsels or procures another to deal, in securities of a company concerning which he has any knowledge that:
> (a) is not publicly available; and
> (b) would, if it were publicly available, materially affect the price of the securities . . .
> (2) This section applies to:
> (a) any director, officer or employee of the company concerned;
> (b) any person associated in a professional capacity with that company; and
> (c) any person who obtains such information from any of the persons mentioned in paragraph (a) or (b).
> (3) No dealing shall be void or voidable by reason only that it was entered into in contravention of this section.[8]

The above statutory provision covers two types of insider dealers. Paragraphs 2(a) and (b) relate to primary insiders whereas paragraph 2(c) relates to secondary insiders. Although the law on insider dealing in Zambia covers both primary and secondary insider dealers, it fails to address the liability of third parties who obtain and use information from secondary insider dealers. In addition, the Securities Act 1993 does not provide any statutory defences to the offence of insider dealing. Also, whereas government securities such as bonds can be traded on a securities market in Zambia,[9] insider dealing law applies only to company securities. The latter shortcoming is evident in the range of securities covered by section 52 of the Securities Act 1993 which deals with insider dealing in Zambia.[10]

It is clear that in drafting the Securities Act 1993, neither the draftsman nor the members of parliament (when debating the Securities Bill 1993) took into account the shortcomings highlighted above.[11] One of the major factors that could have led to this development is that there were not many Zambian corporate finance lawyers that were involved in preparing the Securities Bill 1993.[12] Even today, with an expanding financial sector, Zambia

7 *Interview* with Mr. C. Mate, Chief Executive, Lusaka Stock Exchange, Lusaka, 20th December 1996.

8 Securities Act 1993, sec. 52.

9 See generally Part I of the Securities Act 1993 and, in particular, section 2 of that Act.

10 For a text of section 52 of the Securities Act 1993, see above.

11 See *infra*. (n.6). See also *Daily Parliamentary Debates* (Hansard), Thursday, 29th July 1993 (Lusaka: The National Assembly, 1993), pp. 545-549.

12 Originally, *interview* with B. Ngenda, then Chairman of the Zambia Stock Exchanges Council (Lusaka, 23rd August, 1993): B. Ngenda gave an indication that he had drafted the Securities Bill 1993. However, in a recent reply from the Chief Executive of the Securities Exchange Commission, M. Kapumpa, to a newspaper article by this author (see K.K. Mwenda's article in *Financial Mail of Zambia*, 2nd April, 1996) it was argued by the Chief Executive that the Securities Bill 1993 was drafted by experts in the field of securities regulation from various countries which included the United States and the United Kingdom; see M. Kapumpa's article in *Sunday Times of Zambia*, 11th April 1996. Furthermore, in a *discussion* with E. Chipimo Jr., then Secretary of the *ad hoc* committee on overseeing the establishment

has a handful of corporate finance law experts and specialists.[13] We now turn to look at the salient features of insider dealing law in Hungary. We will make critical comparisons and contrasts with aspects of the law in Zambia.

Looking at securities law in Hungary, we see that under that country's Securities and Stock Exchange Act VI 1990, paragraph 75 provides that:

> (1) It is forbidden to deal using confidential insider information, and those who have confidential insider information are prohibited from dealing personally or by proxy (hereinafter: insider dealing) or in connection with the securities involved.
>
> (2) Confidential insider information relating to the financial, economic and legal situations of the Issuer, Broker and Warrantor: If changes are likely to occur in their situation, then in these cases the confidential insider information's publication may affect substantially the value of securities, in particular to new issues, major deals, structural changes, turn-round projects and winding up.

It is clear from the above statutory provision that insider dealing law in Hungary, like that in Zambia, emphasises that in order for a person to be convicted of the offence of insider dealing his conduct must have affected the value of the securities. The drafting and scope of the Zambian statute and the Hungarian statute, however, differ to some extent. Whereas section 52 of the Zambian Securities Act 1993 stipulates that the insider's conduct must '*materially* affect the *price* of the securities', paragraph 75 of the Hungarian Securities and Stock Exchange Act VI 1990 provides that the insider's conduct must 'affect *substantially* the *value* of securities.' What is deemed 'substantially' under Hungarian law has not been spelt out in the Hungarian Act. Moreover, it is doubtful whether the words 'substantially' and 'materially' mean the same thing. The same applies to words such as 'value' and 'price'.

The Zambian statute, like its Hungarian counterpart (for the latter statute with regard to the term 'substantially'), has no definition of the term 'materially'. It must be observed, however, that the Hungarian statute, unlike the Zambian statute, goes further to confine liability of insider dealing to new issues of securities, major deals, structural changes, turn-round projects and winding up. The Hungarian statute does not, however, define what constitutes major deals, structural changes or turn-round projects.

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of the Lusaka Stock Exchange (Lusaka: 30th August 1993), E. Chipimo submitted that most of the provisions in the Securities Bill 1993 of Zambia were drawn from legislation in the United States, the United Kingdom, Canada and Australia. It is, however, doubtful that there was any major input from the local specialists on the subject since at that time the two Zambians who were qualified corporate finance lawyers and who were actively involved in the setting up of the Lusaka Stock Exchange were the then Chairman of the Zambia Stock Exchanges Council, Mr. B. Ngenda and Mr. E. Chipimo Jr. himself. Mr. E. Chipimo Jr. made clear indications that he was not involved in the drafting of the Securities Bill 1993. Indeed, this evidence helps to explain why the Securities Act 1993 appears to have been drafted in a way that indicates that there was no thoughtful consideration given to some of the shortcomings in that Act (and shortcomings in related Zambian commercial law statutes e.g. there was no definition of who is a 'director',in Zambia's Companies Act 1921. For further discussions, see below).

13 Generally, the reasons for this are twofold. First, the University of Zambia Law School, which is the only Law School in the country, does not offer courses on corporate finance law. Secondly, since Zambia attained political independence, Zambia's financial sector has remained predominantly underdeveloped. It is only recently that other forms of corporate financing such as raising finance on a stock market are being explored in Zambia. This feature entails that there are not many local lawyers and accountants who could have gained substantial experience in the area of securities regulation in Zambia. However, in his reply to this author's newspaper article (see above), the Chief Executive of the Securities Exchange Commission argued that there are now efforts to get the University of Zambia Law School to introduce a course on securities regulation in Zambia.

Having said that, it is important to observe that paragraph 77 of the Hungarian statute defines insider dealing as:

> Insider dealing made by an insider for his own or for a third person's benefit
> a) deals in securities related to insider confidential information,
> b) deals by proxy of another person in such securities,
> c) divulges insider information to whomever may be likely to benefit from such knowledge or pass on within the Stock Exchange.

By comparison, it is clear that whereas section 52 of the Zambian legislation on insider dealing covers only liability of primary and secondary insiders, paragraph 76 of the Hungarian legislation covers liability not only of primary and secondary insider but also that of close relatives of various persons such as the chief executive of the issuer; close relatives of the executive officers of the issuer; close relatives of any legal person owning a major interest in the issuer and close relatives of the bank that keeps the issuer's account. The Hungarian Act does not, however, define what is meant by 'close relatives.' Furthermore, this Act is somewhat not clear on the liability of other third parties who engage in insider dealing. It could, however, be argued that in situations where a person is seen as falling in the close relative category and this person is a third party, then he or she can be liable as an insider under Hungarian law.

The Hungarian Act goes on to say:

> (1) Qualified Insiders are:
> a) chief executives and executive officers of Issuer, Issue-Broker, of any legal person (corporation) that owns a major interest in Issuer, as defined in the Company Act para 322, and of the bank that keeps Issuer's account;
> b) close relatives of those listed in (a) above/Civil Code para 685 b)/;
> c) those who own 10 percent or more of Issuer's authorised capital, and the close relatives of the natural person/Civil Code para 685 b)/;
> d) those who within the last six months have or had been employed or established any kind of close working-contact with the Issuer — independently of whether they are natural or legal persons — in a capacity giving them access to confidential inside information (such as auditors, legal advisors, tax consultants).
>
> (2) And anybody else enumerated over in (1) to whom handed over confidential information or obtained that in any kind of manner and who has knowingly had access to confidential inside information.[14]

Whereas sub-section (1) of the above statutory provision is well drafted and it is easy to follow,[15] sub-section (2) is somewhat very poorly drafted. For arguments sake, we submit that sub-section (2) provides for liability of third parties who deal or advise others or procure others to deal in securities using inside information obtained from either primary insiders or secondary insiders, or both. Persons described in the above statutory provision (i.e. paragraph 76 of the Hungarian statute) constitute the categories of potential insider dealers under the Hungarian law. Thus, we see that the Hungarian law is much more encompassing than the Zambian law where categories of potential insiders are concerned.

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14 Hungary's Securities and Stock Exchange Act VI 1990, paragraph 76.

15 Major aspects of the law in paragraph (a), (b) and (c) of sub-section (1) have been examined above. Paragraph (d) applies to persons who could have acted as professionals dealing with the company or any persons who could have been employees of the company in the six months prior to the offence.

Insider Dealing Law and Civil Remedies

Both in the Hungarian and Zambian statutes, the objective of insider law has not been spelt out clearly. There is need to address this factor. For example, it would be interesting to ask whether insider dealing law in Zambia is meant to protect investors from market abuses or it is meant to punish persons convicted of insider dealing. If the law on insider dealing in Zambia is meant to protect investors from market abuses, then investor protection and investor confidence in the market must be primary considerations of the law.[16] If, on the other hand, insider dealing law in Zambia addresses only criminal sanctions against convicted insider dealers, then investor protection is not the main concern of the Securities Act 1993. In Hungary, paragraph 80 of the Hungarian Act merely places the onus on the insider (himself) to report his activities to the regulatory authority and also to the stock exchange:

> Those who under para 76(1) are deemed insiders shall immediately report to the Supervisory Board and to the Stock Exchange whenever they make or made a deal personally or by proxy, in a Security issued by corporations where they were — according to para 76(1) — in a position to gain access to confidential insider information.[17]

This position poses a lot of illogical difficulties. It is arguable whether an insider could volunteer himself up and report his activities to the regulatory authority and to the stock exchange. There has to be a great incentive that outweighs the costs of the insider giving himself up. However, we submit that, perhaps, what could have been intended by the draftsman in drafting this statutory provision was that if a party was of the view that it could be deemed that he was going to act as an insider, the onus was on that party to make a disclosure of his activities to the regulatory authority and to the stock exchange. Once that was done, then the disclosing party would be exempted from liability. This position has, nonetheless, not been well put in the Hungarian Securities and Stock Exchange Act.

It must be observed further that although the Hungarian Securities and Stock Exchange Act does not spell out the penalties to be faced by parties that are convicted of the offence of insider dealing, in many civil law countries the bulk of statute law providing for criminal sanctions is covered in a separate piece of legislation. This approach differs from that found in many common law jurisdictions.[18] In Zambia, the Securities Act 1993 itself provides for criminal sanctions. As shown above, under section 52 of the Zambian Securities Act 1993, penalties for engaging in insider dealing are found in that statutory provision. It must be observed, however, that although the Zambian Securities Act 1993 does provide for criminal sanctions against convicted insiders, it does not provide for civil remedies to parties

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16 This feature underlies the concept of market efficiency of stock markets. For an elaborate read on 'strong form' efficiency, 'semi-strong form' efficiency and 'weak form' efficiency, see R.A. Brealey and S.C. Myers, *Principles of Corporate Finance* (New York: McGraw-Hill, 1991), pp. 290-297; E.W. Davis and J. Pointon, *Finance and the Firm: An Introduction to Corporate Finance* (Oxford: Oxford University Press, 1994), pp. 319-322; P.H Cootner (ed.), *Random Character of Stock Market Prices* (Cambridge, Massa.: M.I.T Press, 1964), pp. 17-78; Fama, "Efficient Capital Markets: A Review of Theory and Empirical Work," *Journal of Finance*, 25/2 (May 1970), 343-417; Roberts, "Stock Market 'Patterns' and Financial Analysis: Methodological Suggestions," *Journal of Finance*, 14 (March 1959), 1-10.

17 Hungarian Securities and Stock Exchanges Act VI 1990, paragraph 80.

18 Although it is common practice in many common law jurisdictions to have penal codes or other criminal law statutes, these pieces of legislation do not provide exhaustive sources of statute law on crime. Certainly, in many common law jurisdictions other criminal laws can be found in various statutes such as the Companies Act, Income Tax Act, the Securities Act and so forth.

prejudiced by insider dealing. Furthermore, although section 54 of the Zambian Securities Act 1993 provides that civil action can be brought against any person convicted of an offence under Part VII of the Act, the section does not provide for specific civil remedies to a party prejudiced by insider dealing. Indeed, section 54 of the Securities Act 1993 provides as follows:

> (1) A person who is convicted of an offence under this Part shall, in addition to any criminal liability for the offence, be liable, at the suit of any person who has sustained pecuniary loss as a result of having purchased or sold securities at a price affected by the act or transaction which comprises or is the subject of the offence, to an action of damages in respect of the loss concerned.
>
> (2) Nothing in this section limits or diminishes any civil liability which any person may incur under any other law.

The above statutory provision in the Zambian statute adds very little to the common law. The section simply introduces further complications. First, an action for civil remedies in Zambia, against an insider, can only be brought under section 54 of the Securities Act 1993 after the insider has been convicted of a criminal offence under Part VII of that Act. Thus, an insider cannot be made liable for civil wrongs relating to insider dealing unless he has been convicted of a criminal offence under Part VII of the Securities Act 1993.[19] Part VII covers criminal offences such as insider dealing, false trading and manipulation of the market, use of deceptive statements (or dishonest concealments) as inducements, fraudulent transactions and false or misleading statements in connection with sale of securities. However, our concern here is with the offence of insider dealing. Given the shortcomings of section 52 of the Zambian Securities Act 1993, as shown above, it could be submitted that the prospects of a prejudiced party receiving civil remedies as a form of investor protection under the Zambian Securities Act 1993 are quite remote. Secondly, section 54 of the Zambian Securities Act 1993 mainly stresses the aspect of damages as a form of civil remedies under the Act. The section does not make provision for statutory compensation. Although damages are a form of compensation, the amount of damages granted will often be limited by factors such as causation, remoteness, and mitigation rules.[20] By contrast, an explicit provision in the Securities Act 1993 spelling out the liability to compensate a prejudiced party will not necessarily be approached by the courts in the same manner that the court will approach damages at common law.

Having said that, we are mindful of the fact that section 54(2) of the Zambian Securities Act 1993 does make provision for a prejudiced party to seek equitable remedies provided that legislation does not state otherwise. To illustrate, although restitution can be sought under Zambian securities law, a contract vitiated by insider dealing may not be rescinded.[21] This position is discussed in detail later in this work. Under section 54 of the Zambian Securities Act 1993, the burden of proof is on the plaintiff to prove, on a balance of probabilities, that the defendant has committed a civil wrong against the plaintiff and the latter is now entitled to civil remedies. It must be observed that some of the important reasons for observing that there is need t6 have civil remedies expressly provided for in

19 This makes the pursuit of civil remedies for insider dealing conditional upon there being a criminal law conviction. It is our humble submission here that permission to pursue any civil remedies for insider dealing in future must be made independent of the criminal law so that investor confidence in the Zambian market is sustained.

20 See generally, A. Burrows, *Remedies For Torts and Breach of Contract*, 2nd ed. (London: Butterworths, 1994).

21 See below.

the Securities Act 1993 are that whereas the burden of proof in criminal law lies on the prosecution (and not on the party suffering loss), the burden of proof in civil law cases lies on the plaintiff (the party suffering loss). In civil cases, unlike in criminal cases, the prejudiced party can recover damages for the loss he has suffered.[22] Hence, it is submitted that in civil cases, compensation (or restitution of parties where possible) of the prejudiced party is an important consideration.[23] Furthermore, whereas the standard of proof in criminal cases is that of beyond reasonable doubt, the standard of proof in civil cases is based on a balance of probabilities. Indeed, in civil cases the standard of proof is lower than that in criminal cases.

Liability of Companies and *de facto* Directors

In Zambia, the Companies Act 1994 provides that:

> A person not being duly appointed director of a company, on whose directions or instructions the duly appointed directors are accustomed to act shall be deemed to be a director for the purposes of all duties and liabilities imposed on directors. . .[24]

The above provision has made improvements to the law on directors' liability and directors' duties in Zambia. The provision introduces the concept of shadow director in Zambian company law. Under the repealed Companies Act 1921 and under the Securities Act 1993, the concept of shadow director was not (and is not) covered. As Goode argues, a shadow director in contrast to a *de facto* director, normally acts through a *de jure* (legally appointed director),[25] whereas a *de facto* director acts as director although he has not been (or not validly) appointed as such. Thus, a *de facto* director, in contrast to a shadow director, acts himself as if he were a director.

It is, however, clear that before the enactment of the Companies Act 1994 in Zambia, no person 'materially' influencing decisions of a company's board of directors (from outside the company) could be made liable as a shadow director. This in turn meant that under the Securities Act 1993, no person acting as a shadow director and releasing inside information to investors could be made liable as an insider. The reason was simple. Until the enactment of the Companies Act 1994, such a person would not be treated as a director under corporate law in Zambia. As pointed out above, the coming into force of the Companies Act 1994 introduced the concept of shadow director. Indeed, the concept of shadow director now applies to the law on insider dealing in Zambia as much as it applies to company law in Zambia. And so, when determining who is and who is not a company director in Zambia for purposes of interpreting the statutory provision on insider dealing in Zambia, the concept of shadow director, as established by section 203(4) of the Companies Act 1994, applies to securities law. One shortcoming here is that the Zambian Securities Act 1993 does not stipulate the length of time for which a person could be said to have been acting

22 See generally, D. Harris, *Remedies in Contract and Tort* (London: Weidenfeld and Nicholson, 1988); G. Samuel and J. Rinkes, *Law of Obligations and Legal Remedies* (London: Cavendish Publishing Ltd., 1996).

23 See generally, *Ibid.*

24 Companies Act 1994, sec. 203(4).

25 See R.M. Goode, *Principles of Corporate Insolvency Law,* 1st ed. (London: Sweet and Maxwell, 1990), pp. 196-197; R.M. Goode, *Principles of Corporate Insolvency Law,* 2nd ed. (London: Sweet and Maxwell, 1997), pp. 443-456; See also generally, P. Loose, J. Yelland and D. Impey, *The Company Director* (Bristol: Jordans Publishing Ltd. 1993). A shadow, contrasted from a *de facto* who normally acts in person, acts through someone.

as a director so as to be held liable for insider dealing. By contrast, the Hungarian Securities and Stock Exchange Act VI 1990 provides that:

> If an insider as defined in paragraph 76(1) a) and b) [see above] resells a Security within three months to the person he had purchased it from, or purchases it back from the person he had sold it to, he should be presumed to have committed insider dealing, except in the case of him proving that confidential information was not available.[26]

There is no such equivalence in the Zambian Securities Act 1993. Indeed, paragraph 79 of the Hungarian securities legislation spells out the time limit for which a person can be said to be engaging in insider dealing. The law in Hungary goes on further to provide exemptions from liability for engaging in insider dealing. Paragraph 79 of the Hungarian statute provides as follows:

> The transaction shall not be deemed an insider dealing if the insider can prove that
> a) he had to sell the Security as Liquidator to pay creditors,
> b) the transaction was concluded with a person who had the same inside knowledge available.

However, it must be pointed out that had the Zambian Securities Act 1993 incorporated a similar provision, there would have been need to ensure that each time sub-paragraph a) of the above provision was relied upon, the liquidator did not act in breach of insolvency laws such as those prohibiting transactions at an undervalue and preferences to creditors.[27]

In Zambia, bodies corporate are excluded from the two categories of insiders covered by section 52 of the Securities Act 1993.[28] To reiterate, section 52(1) of the Securities Act 1993 provides that:

> (1) A person to whom this section applies who deals, or counsels or procures another to deal, in securities of a company concerning which he has any knowledge that:
> (a) is not publicly available; and
> (b) would, if it were publicly available, materially affect the price of the securities
> . . .

In the above section, the pronoun 'he' obviously refers to individuals. The above statutory provision is drafted in such a way that companies ceased with inside information cannot be trapped under insider dealing law in Zambia. By comparison, the Hungarian statute also adopts similar wording and provides that:

> Insider dealing made by an insider for *his* own or for a third person's benefit . . .[29]

Thus, although in Zambia bodies corporate such as merchant banks and those acting as underwriters, promoters and operators of collective investment schemes could benefit from this weakness in the law, in Hungary, by contrast, the position is not necessarily the same. Under Hungarian securities legislation, bodies corporate are caught up by paragraph 76 of the Hungarian Securities and Stock Exchange Act VI 1990. This statutory provision defines who are insider persons. Among other targets, the provision identifies natural and legal persons as being potential insiders. The major distinctions, however, between the Hungarian legal position and the Zambian legal position is that whereas under Hungarian securities

26 Hungarian Securities and Stock Exchange Act VI 1990, paragraph 78.

27 *Cf.* The Zambian Companies Act 1994, sec. 277.

28 In section 52(1) of the Securities Act 1993, the pronoun 'he' obviously refers to individuals.

29 See Hungarian Securities and Stock Exchange Act VI 1990, paragraph 77.

legislation the conduct of a proxy would place liability on the principal,[30] under Zambian securities legislation the position is somewhat not clear. Thus in Zambia, the general position remains that companies, unlike partnerships, cannot be made criminally liable nor their directors made criminally liable where other employees acting in the course of business engage in insider dealing. Only the individual wrongdoers will be made criminally liable. This is the case regardless of whether the company dealt in, counseled parties or procured them to deal in securities. Again, one of the major factors that explain weaknesses in the law here is the lack of corporate finance law experts among parliamentary draftsmen.[31] Indeed, it is not even clear whether insider dealing law provisions under the Zambian Securities Act 1993 are restricted to stock market dealings or they also cover dealings off the stock market.[32]

It would, however, be over-stretching the law on insider dealing in Zambia to try to bring liability on company directors under section 77 of the Zambian Securities Act 1993 which, among other things, provides for criminal liability of company directors for the company's breach of regulatory rules made pursuant to provisions of the Securities Act 1993. Section 77 provides that:

> If a body corporate is convicted of an offence against this Act or the rules or regulation made under this Act, every person:
> (a) who is a director of the corporation; or
> (b) who is concerned in the management of the corporation, shall be deemed to have committed the same offence if the person knowingly authorised or permitted the act or omission constituting the offence.

It would also be inappropriate to bring liability of insider dealing on company directors or officers under section 77 of the Zambian Securities Act 1993, which deals in part with liability of company directors who breach provisions of the Securities Act 1993. Under section 77, two cardinal elements must be shown. First, it must be shown that there was conviction of a body corporate and not an individual. Secondly, there is the issue of overcoming the burden of proof that a director 'knowingly' authorised or permitted the act or omission in question. The Zambian Securities Act 1993 does not define what constitutes 'knowingly.' We shall examine the term 'knowingly' later.

Be that as it may, it must be observed that the Securities Act 1993 in Zambia does not exclude members of unincorporated associations (e.g. partners in a partnership) from the two categories of potential insider dealers.[33] We have already examined this point above and here we are developing it further. Under Zambian insider dealing law, there is need to show that partners or their delegates either procured parties to deal in securities, counseled them on the dealings or dealt in securities using inside information obtained from primary insiders. The partnership position mainly affects lawyers and accountants in Zambia. Indeed, in Zambia, these two professions normally organise their business in the form of partnerships. Usually, where lawyers or accountants are not acting as financial intermediaries on the stock market, they will be acting in a professional capacity with the

30 *Ibid.*, paragraph 77 b).

31 See above.

32 For example some of the dealings made pursuant to provisions of the Privatisation Act 1992.

33 In Zambia, the English Partnership Act 1890 and the common law govern partnership law. There are no partnerships with limited liability of partners.

alloting company or the buyer.[34] Such professional capacity could include advising directors of the alloting company (or the buyer) on financial or legal matters affecting the company. This brings lawyers and accountants closer to provisions of the Zambian Securities Act 1993 on insider dealing. Thus, in the latter two capacities described above, lawyers and accountants are likely to be treated as shadow directors[35] and thus making them potential insiders. Indeed, to be triggered, section 52 of the Zambian Securities Act 1993 does not require proof that the recipient of inside information (the insider) asked for the information. Insider dealing liability covers use of unsolicited inside information.[36] The shortcoming, however, is that the law in Zambia does not say when the insider must be seen to have acquired the inside information. By contrast, Hungarian securities legislation, places a six months period as that in which inside information must have been acquired.[37]

Liability of Journalists as Insider Dealers[38]

Generally, under Zambian insider dealing law, newspaper proprietors, publishers and non-employees of companies (e.g. shareholders who are not directors) cannot be held liable where they use inside information obtained from secondary insiders. Thus, the Securities Act 1993 does not prohibit journalists from publishing inside information and thereby obtaining tips from parties interested in that information. Also, receiving inside information from journalists and acting on it is not an offence under the Securities Act 1993. Journalists can get away here without contravening the law because the information they have passed on to their customers has not been obtained from a primary insider, but from a secondary insider. In Zambia, to avoid such weaknesses in the law, the Securities Act 1993 must provide that any person who knowingly transmits or receives and acts on inside information, irrespective of the manner in which the information was acquired, should be liable both under civil and criminal law. The Act must also spell out what constitutes 'knowingly' in both the civil law context and the criminal law context.

Are Intermediaries Professionals as Required by Insider Dealing Law?

Generally, financial intermediaries *per se* are neither professionals nor persons acting in a professional capacity with the company buying or selling the securities.[39] If this view is

34 Here, this view seems to underlie the policy bases of introducing paragraph 76 (1) d) in the Hungarian Securities and Stock Exchange Act VI 1990. That statutory provision stipulates as follows: "those who within the last six months have or had been employed or established any kind of close working-contact with the Issuer — independently of whether they are natural or legal persons — in a capacity giving them access to confidential inside information (such as auditors, legal advisors, tax consultants)."

35 See *Re A Company (No. 00509 of 1987)* [1988] BCC 424; *Re Tasbian Ltd. (No.3)* [1992] BCC 358.

36 See *Re Attorney General's Reference* [1989] 2 All ER. 1.

37 See Hungarian Securities and Stock Exchange Act VI 1990, paragraphs 76 d) and 78.

38 See generally *Re Company Securities (Insider Dealing)* [1988] BCLC 76. In this case, it is likely that the journalist would have been held liable for insider dealing had the case been decided after Part V of the Criminal Justice Act 1994 had come into force. See also *Re Insider Dealing Inquiry* [1988] BCLC 153.

39 See *Christopher Barker & Sons v. IRC* [1919] 2 KB. 222. It is the author's contention that professionals and persons acting in professional capacities have monopoly over their trade and skill e.g. surgeon, lawyer, accountant *etc.* On the other hand, upon authorization, any person can practise as a broker. For a contrary view on the position whether or not financial intermediaries are professionals or act in professional capacities, Discussion with Professor D.D. Prentice, Oxford University, Oxford, 25th October 1993, showed that he is of the view that brokers and other financial intermediaries act in professional capacities. This view could be true in a situation such as that obtaining under section 59

correct, as we contend, then it can be argued that financial intermediaries are not covered by the provision on primary insider dealers in the Zambian Securities Act 1993. The view that financial intermediaries do not carry out a professional task when acting in their ordinary course of business was spelt out in the English case of *Christopher Barker & Sons v. IRC.*[40] In that case, the appellants carried on business of stockbrokers, buying and selling stocks and shares on the market for clients, being remunerated by commission. They were also consulted professionally on the promotion of and the alterations and adjustments of capital in commercial undertakings, and they also made valuation of stocks and shares forming part of the estates of deceased persons, being remunerated for such advice and valuations by fee. It was held that stockbrokers in buying stocks and shares do not carry on a profession and that the work of advice and valuation for which the appellants were remunerated by fees was done as part of and in connection with their business as stockbrokers and not in the exercise of a profession, and that therefore the appellants were liable to excess profits duty.

The consequences of the *Christopher case* in Zambia are that financial intermediaries *per se* are not professionals and do not act in a professional capacity when they are acting in their ordinary course of business. It must be pointed out, however, that in other countries this position has been reversed by legislation.[41] In Zambia, although financial intermediaries *per se* cannot be regarded as professionals or as acting in a professional capacity with investors, rule 28 of the Securities (Conduct of Business) Rules 1993 prohibits financial intermediaries from using inside information obtained from their employees, officers and agents. We now turn to look at what constitutes 'materially affecting the price of securities' and what constitutes 'knowingly' under insider dealing law in Zambia.

What Constitutes 'Materiality' and 'Knowledge' in Insider Dealing Law?

Under section 52 of the Zambian Securities Act 1993, it is clear that one of the essential characteristics that must be satisfied before news is taken to be inside information is that that information must 'materially' affect the price of the securities. We saw earlier on that the Hungarian securities legislation uses similar terminology, namely, the adjective 'substantially' affect the price of the securities. In Zambia, the other requirement to prove insider dealing is that the information must not have been publicly available at the time of communicating and dealing in it. A similar approach is seen in the Hungarian securities legislation and in that Act the phrase 'confidential information' is used to define the attributes of insider dealing.[42] In Zambia, as was pointed out earlier, the criterion of defining what constitutes 'materially (or materiality)' has not been spelt out in the Securities Act 1993. It is also doubtful whether fraudulent omissions[43] that create inflated prices of securities could amount to insider dealing. Moreover, the weakness of the local currency

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of England's Criminal Justice Act 1994, where the label 'professional intermediary' is used and also that prevailing under paragraph 76 of the Hungarian Securities and Stock Exchange Act VI 1990 where the term 'Issue-broker' is used. By contrast, in Zambia, the Securities Act 1993 has no statutory provision providing for such labels as those found under section 59 of England's Criminal Justice Act 1994. Thus, in Zambia the *Christopher Case* still applies.

40 *Ibid.*

41 See for example, section 59 of England's Criminal Justice Act 1994.

42 See paragraph 77 a) of the Hungarian Securities and Stock Exchange Act VI 1990.

43 For example, where company directors with inside information make omissions in listing particulars or prospectuses.

in Zambia entails that the more the currency depreciates the greater the difficulty in proving the issue of 'materiality'. Illustratively, in the American case of *Cady Roberts & Company*,[44] the principle in American securities law that a fact was material if it, if known, would affect the investment judgment of those with whom the insider was dealing was criticised by Commissioner Cary. He argued that this principle produced uncertainty and confusion. He, therefore, suggested the direct effect on the market value of securities as a test in addition to the 'investment judgment' principle. This dual test, however, does not establish certainty. For example, how is market value to be determined given a weak and fluctuating currency such as Zambia's?

Furthermore, the Zambian Securities Act 1993 does not define what constitutes 'knowledge'. Distinctions can be drawn here between various forms of knowledge.[45] In *Selanghor v. Craddock (No.3)*,[46] Ungoed-Thomas J. was of the view that 'knowledge' meant 'circumstances which would indicate to an honest reasonable man that such design was being committed, or would put him on inquiry'. In *Re Montagu's Settlements*,[47] it was held that 'knowledge' is not confined to actual knowledge, but includes actual knowledge that would have been acquired but for shutting one's eye to the obvious, or willfully and recklessly failing to make such inquiries as a reasonable man would make.' Similarly, in *Baden Delvaux and Lecuit v. Societe Generale*, it was pointed out that:

> . . . knowledge can comprise any one of five different mental states. . . : (i) actual knowledge; (ii) willfully shutting one's eye to the obvious; (iii) willfully and recklessly failing to make such inquiries as an honest and reasonable man would make; (iv) knowledge of circumstances which would indicate the facts to an honest and reasonable man; (v) knowledge of circumstances which would put an honest and reasonable man on inquiry.[48]

In contrast to the civil law position that has been spelt out above, the criminal law position was stated in *Nelson v. Larholt*[49] where it was held that 'knowledge' meant more than constructive knowledge in the sense of shutting one's eyes to the obvious. In *Warner v. DPP*,[50] Lord Reid held that knowledge could include 'willfully shutting one's eyes to the truth.' Willful, on the other hand, could mean deliberate or reckless acts or omissions.[51] It is clear, however, that since section 52 of the Securities Act 1993 of Zambia provides only for criminal liability for the offence of insider dealing, the context in which the term 'knowledge' must be understood here is the criminal law context.

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44 40 SEC 907 at 911. See also *SEC v. Texas Gulf Sulphur Co.* 401 F 2d 833.

45 For example see the distinction between 'knowing receipt and dealing' and 'knowing assistance' under trust law in G. Moffat, *Trusts Law: Text and Materials* (London: Butterworths: 1994), pp. 578-590 and in J.G. Riddall, *The Law of Trusts* (London: Butterworths, 1996), pp. 434-439. In our work, we shall not labour on such distinctions.

46 [1968] 2 All ER 1073.

47 [1987] Ch. 264 at 285.

48 *Per* Peter Gibson J., [1983] BCLC 325; See also *El Ajou v. Dollar Land Holdings plc* [1993] 3 All ER 717 at 739; *Polly Peck International Plc v. Nadir* (No.2) [1992] 4 All ER 769; *Karak Rubber Co Ltd v. Burden* (No.2) [1972] 1 WLR 602 at 632; *Agip (Africa) Ltd v. Jackson* [1992] 4 All ER 385; *Eagle Trust Plc v. SBC Securities Ltd* [1992] 4 All ER 488 at 499; *cf. Belmont Finance Corporation v. Williams Furniture Limited* [1979] Ch 250; *Royal Brunei Airlines Sdn Bhd v. Tan* [1995] 3 All E.R. 97; *Brinks Ltd v. Abu-Saleh (No.3)* (1995) Times, 23 October; Birks [1989] *Lloyd's MCLQ* 296; Birks (1989) 105 *LQR* 352 at 355; Ricket (1991) 11 *OJLS* 598 at 602; *Powell v. Thompson* [1991] 1 NZLR 597.

49 [1948] 1 KB. 339 at 344.

50 (1968) Cr. App. 373 at 398.

51 *R v. Moys* (1984) 79 Cr. App. 72. See also *R v. Sinclair* [1986] 1 WLR 1246.

Does Insider Dealing Vitiate the Contract?

Under Zambian law, as a general rule, insider dealing cannot vitiate an investment contract.[52] By comparison, the position in the United Kingdom prior to the enactment of the Criminal Justice Act 1994 was illustrated in the case of *Chase Manhattan Equities v. Goodman.*[53] In that case, Knox J. ruling on the legal consequences of insider dealing, proceeded:

> . . . The sale agreement is therefore . . . unenforceable . . . because it was tainted in its creation by an infringement.

In the United Kingdom, it is now provided in section 63(2) of the Criminal Justice Act 1994 that no contract shall be void by reason only of being tainted with insider dealing. It is clear that in Zambia, like in the United Kingdom under the Criminal Justice Act 1994, the Securities Act 1993 also provides that insider dealing cannot vitiate an investment contract. This means that both in Zambia and the United Kingdom the equitable remedy of rescission is generally not available to a party prejudiced by insider dealing.[54] Be that as it may, a party prejudiced by inside information both in Zambia and the United Kingdom can bring an action for damages where he has suffered loss resulting from the defendant's negligence.[55] At common law, the burden of proof lies on the prejudiced party to prove that the defendant (who is the insider) owed the prejudiced party a duty of care and that the defendant breached that duty. The defendant's breach of duty must result in the plaintiff's loss.[56] The difficulty, however, in bringing civil action against the insider dealer lies in the plaintiff proving that he or she actually suffered loss as a result of the defendant's action. Although the insider could have made an unfair gain from his transaction, it is not easy to say precisely which party has suffered loss from the transaction(s) of the insider.[57] Should the buyer of the securities (the one who buys from the insider) bring an action against the insider claiming that the insider acted unfairly towards him or should the action be brought by the company that alloted the securities claiming that it has suffered a great loss as a result of the insider's action or should the action be commenced by the shareholders of the company that alloted the securities? Here, we are faced with an issue of law and fact. The facts of each case would determine which party has the *locus standi* to bring an action. It must, however, be reiterated that the importance of having clear statutory provisions on civil remedies for parties prejudiced by insider dealing lies in part in the fact that such remedies are an incentive to promoting investor confidence in the Zambian stock market.

Trustees as Insider Dealers and Conflict of Their Fiduciary Duties[58]

What happens where a person is a director of a company and he acquires inside information whilst at the same time acting as a trustee of a trust which holds shares in that company? The Zambian Securities Act 1993 says nothing on this. However, such a person finds himself

52 Securities Act 1993, sec. 52(3).

53 [1991] BCLC 897 at 934. For a discussion on insider dealing and the equitable remedy of rescission see B. Rider and L. French, *The Regulation of Insider Trading* (London: Macmillan Press, 1979), p. 92.

54 See B. Rider and L. French, *Ibid.*, p. 92.

55 *Ibid.*

56 *Ibid.*

57 See generally Law Society (UK), *The Law on Insider Dealing*, Memorandum No. 213. 1990; Ashe, "Insider Dealing", *Company Lawyer*, 11, (1990), 127; Naylor, "The Use of Criminal Sanctions for Insider Trading", *Company Lawyer*, 11, (1990), 53; DTI (UK), *The Law on Insider Dealing — Consultative Document* (1989).

58 For a detailed discussion see D. Parker and A. Mellows, *The Modern Law of Trusts* (London: Sweet and Maxwell, 1983), pp. 327-328.

in a position of conflict of duties. The prudent thing might be for such a person to resign his trusteeship since seeking independent advice would entail communicating information.

Is There any Need to Legislate Against Insider Dealing?

A number of studies have been undertaken on the economics of insider dealing.[59] Arguments such as the hypotheses on weak form, semi-strong and strong form efficient markets have been advanced by several writers.[60] It is, however, not our purpose in this section to regurgitate such information.

Suffice it to say, on the one hand, scholars such as Manne have argued that if directors or other insiders were permitted to trade on the basis of their inside knowledge, that would produce gradual adjustments in share prices on the market.[61] The markets would react to increased buying or selling (which would then push the prices up or down) as the inside information gradually became public. On the other hand, Manne argues, there is likely to be a surge or drop in market prices once a public announcement is made of price-sensitive information that has hitherto been kept as a carefully guarded secret.[62]

One major shortcoming of Manne's theory is that it treats insiders as rational investors whose market behaviour is not affected by constraints or market imperfections such as transaction costs, agency costs and information costs. Furthermore, Manne does not address the impact of insider trading on investor confidence in the market. Ashe, like Manne, argues that there is little evidence to suggest that insider dealing in fact works against investor confidence.[63] Ashe observes that the underlying factor behind the enactment of insider dealing laws is that markets to be successful depend as much on the flow of information as on the liquidity of dealing.[64] Ashe challenges the basis of the argument that if potential investors in the market do not have equal access to information then the market will be seen as unfair and thus damaging to investor confidence. He submits, instead, that fairness is not necessarily the best basis for supporting insider dealing laws.[65] There will be instances when there is unfairness on the market such as when one investor has more skill than another or when one investor does not have as much sophisticated research data as another. According to Ashe, it is therefore the public confidence argument which underscores the reasoning behind criminal sanctions for insider dealing — that for the public good the criminal law needs to intervene.[66] Ashe's view that it is the public confidence argument which underscores the reasoning behind criminal sanctions for insider dealing has its own

59 See for example H.V. Roberts, "Statistical versus Clinical Prediction of the Stock Market," unpublished paper presented to the Seminar on the Analysis of Security Prices, University of Chicago, May 1967; R.R. Pettit, "Dividend Announcements, Security Performance, and Capital Markets Efficiency," 27 *Journal of Finance*, (December 1972), pp. 993-1007; G. Foster, "Stock Market Reaction To Estimates Per Share By Company Officials," *Journal of Accounting Research*, (Spring 1973), pp. 25-27; E.F. Fama, "Efficient Capital Markets: A Review of Theory and Empirical Work," 25 *Journal of Finance*, (May 1970), pp. 383-417. See also R. A. Brealey and S.C. Myers, *Principles of Corporate Finance*, 4th edition, (New York: McGraw-Hill, 1991), pp. 290-310 ; E.W. Davis and J. Pointon, *op. cit.*, pp. 319, 320, 321 and 325.

60 See generally *Ibid.*

61 See generally H.G. Manne, *Insider Dealing And The Stock Market* (New York: Free Press, 1966).

62 See generally *Ibid.*

63 See T.M. Ashe, *op. cit.*, p. 127.

64 *Ibid.*, p. 127.

65 *Ibid.*, p. 127.

66 *Ibid.*, pp. 127-128.

shortcomings. The argument overlooks the importance of civil sanctions for insider dealing and thus does not address the protection of property rights of victims of insider dealing.

In a 1985 study, 'Insider Trading And The Exploitation Of Inside Information', it was observed that activities of insiders in fact sustained investor confidence in the market because insiders are seen as leading indicators while others follow.[67] This view has its own shortcomings too. Every market has its own distinct micro and macro-economic factors that could affect investor confidence and behaviour on the market. Indeed, one South African study shows that:

> ... the witnesses have been unanimous in the condemnation of insider dealing in all its forms.[68]

Although this South African study does not document the reasons behind the mass condemnation, the study illustrates that not always will other investors follow behind insider investors. Thus, the 'insider-signalling' theory has its limitations.

Other theories that try to explain why insider dealing should be legislated against include the 'misappropriation' theory.[69] Under the misappropriation theory, non-public price-sensitive information is regarded as a valuable commodity which is the property or akin to the property of a company.[70]

> The information does not belong to the individuals who make up the company. It is therefore inequitable and akin to theft for those individuals to make use of that information for their own gain. This theory does not require any loss to have been suffered in real terms — the offensive behaviour is seen as the unjustifiable gain or avoidance of loss. This equation of insider trading with misappropriation is perhaps the strongest argument in favour of criminal sanctions.[71]

The misappropriation theory, like other theories discussed above, has its own shortcomings. How do we prove, for example, elements of the offence of insider dealing if both the offence and the transactions must be treated together as constituting the *actus reus*? This makes proof of all of the elements of an offence to the criminal standard very difficult.

The 'fairness and confidence in the market' theory, discussed by Ashe,[72] rests on the view that if, of two potential players in a market, one has price-sensitive information available and the other has not, that is unfair.[73] Unfairness here is seen to lead to loss of confidence. This theory is sometimes taken together with the misappropriation theory. When this happens, proponents of the 'hybrid' theory may or may not assert that the 'victims' suffer loss as opposed to making a profit.[74]

CONCLUSION

This paper has examined the efficacy of the law on insider dealing in Zambia and Hungary. A critique of the relevant statutory provisions has been made and a number of problem

67 See *Ibid.*, p. 128. See also P. Kibuchi, *The Legal Aspects of Public Distribution of Securities in Kenya*, unpublished LL.M dissertation (Coventry: University of Warwick, 1997), p. 21.

68 See B. Rider, "The Regulation of Insider Dealing in the Republic of South Africa", *South African Law Journal*, Vol. 94 (1977), p. 437.

69 See J. Dine, *op. cit.*, pp. 57-58.

70 *Ibid.*, p. 57.

71 *Ibid.*, p. 57.

72 See above.

73 See J. Dine, *op. cit.*, p. 58.

74 See *Ibid.*, p. 58.

areas have been identified. Reference has been made to securities law in the United Kingdom. Furthermore, we have provided important reasons that explain why there are some flaws in the statutory provisions governing the law on insider dealing in Zambia. Important recommendations have been made to redress some of these shortcomings.

The importance of examining the efficacy of the law on insider dealing in countries such as Zambia and Hungary can be appreciated against the backdrop of concepts such as market efficiency. The essence of an efficient stock market is that any information relevant to the company is fully and immediately absorbed in its share price.[75] Most of the market efficiency tests that have been carried out on emerging stock markets indicate that emerging markets do not fall into the category of weak-form market efficiency.[76] Besides, despite some of the anomalies that are characteristic of these markets, emerging markets cannot by that fact alone be said to be inefficient. Some of the anomalies of these markets may indicate, instead, that asset pricing models on which they are based are inadequate.[77] A number of studies have been undertaken on the market efficiency of emerging stock markets.[78] These studies show, for example, that the pricing mechanisms of these markets are usually affected by the volume of trade in securities on a particular day or in a particular season.[79] There is, nonetheless, limited similarities between the seasonalities in developed country stock markets and that in emerging stock markets. The reason for this view is simple. Emerging stock markets, like developed country stock markets, have their distinct institutional characteristics. Also, emerging markets are relatively segmented and have until recently not been adequately integrated with each other and with developed country stock markets.

Although there has not been any conviction of insider dealers in Zambia, it would be wrong to argue that there is no need to legislate against insider dealing in Zambia. There are several factors which could explain, for example, why in many countries there have been few insider dealing prosecutions and convictions. Reasons include the view that there is need to have special juries in financial fraud cases. Such juries are to be constituted by experts in the relevant field in which the financial crime falls so as to overcome the problem of trying sophisticated financial fraud cases in ordinary courts of law. Our contribution to

75 See E.W. Davis and J. Pointon, *op.cit.*, p.320.

76 See C.B. Barry and L.J. Lockwood, "New Directions in Research on Emerging Capital Markets," *Financial Markets, Institutions and Instruments*, Vol. 4, No. 5 (Oxford: Blackwell Publishers, 1995), p. 21. On the meaning of the term 'market efficiency', see R.A. Brealey and S.C. Myers, *Principles of Corporate Finance* (New York: Mcgraw-Hill, 1991), p. 290. R.A. Brealey and S.C. Myers observe: "When economists say that the security market is efficient, they are not talking about whether the filing is up-to-date or whether desktops are tidy. They mean that information is widely and cheaply available to investors and that all relevant and ascertainable information is already reflected in security prices." The concept of efficient markets is a by-product of a chance discovery on how stock and commodity prices behave. In other words, prices of securities on an efficient market follow a *random walk*.

77 See M.T. Porter, "Closed-end Emerging Country Funds Review," in K.H. Park and W. Van Agtmael, (eds), *The World's Emerging Stock Markets* (Chicago: Probus Publishers, 1993), p. 21.

78 For an elaborate read on the semi-strong form tests of emerging markets see for example, M. Herrera and L.J. Lockwood, "The Size Effect in the Mexican Stock Market," *Journal of Banking and Finance*, 18, (1994), 621-632.

79 See for example R. Aggarwal and P. Rivoli, "Seasonal and Day-of-the-Week Effects in Four Emerging Stock Markets," *Financial Review Studies* 1, (1988), 541-550; M. Gultekin and N.B. Gultekin, "Stock Market Seasonality: International Evidence," *Journal of Financial Economics*, 12, (1983) 469-481; S. Claessens, S. Dasgupta and J. Glen, "Return Behaviour in Emerging Markets," *World Bank Economic Review*, 9, (1995), 131-151; A. Corhay, G. Hawawini and P. Michel, "Seasonality in the Risk-Return Relationship: Some International Evidence," *Journal of Finance*, 42, (1987), 49-68.

the general body of knowledge on corporate law in Zambia and Hungary must be appreciated in this light. This is an important recommendation for strengthening the law on insider dealing in Zambia and in many other jurisdictions. In the main, this work is a step forward in interpreting the law on insider dealing both in Zambia and Hungary. Indeed, the work provides a critical appraisal of the law on which policy recommendations can be grounded to improve insider dealing law for emerging markets and thus lead towards efficient markets. If investor protection is to be promoted on emerging markets such as the Lusaka Stock Exchange, investors must be afforded the opportunity to participate fairly in trade on the stock market. A self-regulatory system that allows all market players to have equal and timely access to information on the Lusaka Stock Exchange is an important mechanism for promoting investor confidence in Zambia.